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January 13, 1999

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DEPUTY DIRECTOR
PROPERTY TAXES

Mr.

*Re: Street property, APN
Appealing assessments for years 1991, 1992 and 1993*

Dear Mr. :

This is in reply to your letter of November 13, 1998 in which you request a legal opinion concerning the right of (C) to appeal assessments of the above-referenced property for the years 1991-92, 1992-93 and 1993-94. I have reviewed the documents enclosed with your letter, including the correspondence between your tax agent in this matter, and the Offices of the Assessor and the Clerk of the Assessment Appeals Board, and I have spoken with Mr. by telephone.

As set forth below, we are unable to agree with your conclusion that C , by assuming liability for payment of the delinquent taxes in 1997, thereby became an "affected party" or an "assessee" with standing to appeal the assessments made prior to the foreclosure. Secondly, a valid application for changed assessment must be filed within the prescribed time limitation period, which was not the case for the years 1991, 1992, and 1993. Finally, the assessor was not required pursuant to section 619 to provide notice of the annual assessments for the years in question. A notice of unpaid taxes may not be considered as the equivalent of such a notice for purposes of commencement of the 60-day application filing period of section 1603 when such a notice is not required.

Background

Based on the information presented, I summarize the facts as follows:

The subject property was purchased by a third party in January of 1990 for \$825,000, which consisted of a \$500,000 down payment and a deed of trust and note for \$325,000 held by ("C"). C foreclosed on its note and acquired the property in June of 1994. The assessor's office made a change in ownership determination as of July 27, 1994, although the supplemental assessment was not made until 1997. At the time of the foreclosure, there were delinquent property taxes owing, and in May 1997 C entered into a five year plan to pay the delinquent property taxes.

In July of 1997, C timely filed an application appealing the supplemental assessment for the 1994 transfer and also filed applications appealing the regular assessments for the years 1991, 1992, 1993, 1994, 1995 and 1996. On July 28, 1998, the supplemental assessment application was heard by the appeals board which reduced the value to \$375,000. As a result of that reduction, the applications for 1995 and 1996 have been withdrawn, as has, apparently, the application for 1994. The applications for 1991, 1992 and 1993, the subject of this discussion, were denied by the appeals board because it determined that they were not timely filed.

You contest the appeals board's denial of the subject applications because you contend that C became an "affected party" when it took title to the property and assumed the liability for payment of the delinquent taxes incurred prior to foreclosure. In your view, C should have an opportunity to challenge the past assessments upon which the delinquent taxes are based. You contend that the assessor was required by section 619 of the Revenue and Taxation Code to notify C of the assessments made in those prior years due to C's status as the current assessee. You assert that C was first notified of those assessments by the notice of unpaid taxes which, you believe, must have occurred within 60 days of the date on which C began making payments, May 27, 1997. You conclude that C was entitled to file applications on the notice of unpaid taxes and, by filing on July 3, 1997, C timely filed within 60 days of that notice date in compliance with the requirements of sections 1603 and 1605.

Law and Analysis

Status as an Affected Party or Assessee

Section 1603 provides in subdivision (a) that only a "party affected or his or her agent" is eligible to file an application for changed assessment within the time limitations prescribed in subdivisions (b) and (c). C did not become an "affected party" as a consequence of

agreeing to pay the delinquent taxes for 1991, 1992 and 1993. C did not become an "affected party" until the mortgage was foreclosed, with standing to appeal the assessments for those years. However, even if C held a direct economic interest in the payment of the taxes on the property for the years 1991, 1992 and 1993, C was required to file timely applications in each of those years. An application not timely filed is invalid and an appeals board has no jurisdiction to hear it.

Although you contend that C should be considered the assessee for the years prior to the foreclosure, C was not the assessee in those years but rather, it assumed responsibility for the payment of the delinquent taxes merely to avoid a tax sale of the property. In 1991, 1992 and 1993 the assessee of the property was the prior owner because the property was assessed to it and not to C, the holder of the trust deed and note.

Timely Filing Requirement - Notice of Annual Assessment

For purposes relevant to this discussion, section 1603, subdivision (b)(1) provides that

The application shall be filed within the time period from July 2 to September 15, inclusive. An application that is mailed and postmarked September 15 or earlier within that period shall be deemed to have been filed within the time period beginning July 2 and continuing through and including September 15.

An application was not filed within the above prescribed time limitation period for the years 1991, 1992 and 1993.

While subdivision (b)(3) creates an exception to the limitation period of subdivision (b)(1), that subdivision is not applicable to your situation because the assessor was not required to provide a notice under section 619 under the facts of this matter.

In relevant part, section 619 requires the assessor to inform each assessee of real property on the local secured roll of any increase in full value. However, subdivision (f) provides that "[t]his section shall not apply to annual increases in the valuation of property which reflect the inflation rate, not to exceed 2 percent, pursuant to the authority of subdivision (b) of Section 2 of Article XIII A of the California Constitution, for purposes of property tax limitation determinations."

From the facts presented, it appears that the only increases in the annual assessed value of the property for the years 1991, 1992, and 1993 were base year value adjustments described in subdivision (f). Accordingly, the assessor was not required to send notice of value increases. For that reason, the 60 day filing period of section 1603, subdivision (b)(3) is not applicable, and

Mr.

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January 13, 1999

applications must have been filed within the period prescribed by subdivision (b)(1). Because applications were not timely filed, the appeals board has no authority to hear the applications C recently filed for the years 1991, 1992 and 1993. It follows that any "Notice of Unpaid Taxes" may not be considered to be a substitute for a "Notice of Annual Increase" which was not required.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,



Louis Ambrose
Tax Counsel

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cc:

Mr. Richard C. Johnson (MIC:63)

Mr. David J. Gau (MIC:64)

Ms. Jennifer L. Willis (MIC:70)